

Access by Law Enforcement to Mental Health Board File

Can law enforcement access the Mental Health Board's File or other documents held by the Mental Health Board?

NRS Sec.71961 (1) Provides:

All records kept on any subject shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject (g) agents or employees of the Department of Health and Human Services Regulation and Licensure upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, or (h) the Nebraska State Patrol or the Department of Health and Human Services pursuant to section 69-2409.01

The phrase "all records kept on any subject" is not specifically delineated in statute, but reasonably includes records in the possession of the Mental Health Board as well as the file and other documents maintained by clerk of the district court (see 71-917).

Nothing in the statutes gives any law enforcement agency automatic access to such confidential records, absent one of the exceptions set forth in 71-961 (1). Put another way, without one of the exceptions in 71-961(1) having first been met, the mental health board has no authority to release its records to law enforcement. Note that per subsection (e), the Board can be authorized to release information per a court order. A court order is not a subpoena. If a law enforcement agent presents a subpoena for records in the possession of the Board, that alone would *not* authorize release.

Pursuant to section 69-2409.01, the Nebraska State Patrol is granted very limited access, upon request, "information as may be necessary for the sole purpose of determining whether an individual is disqualified from purchasing or possessing a handgun pursuant to state or federal law." Such information, according to the foregoing statute, "Shall be furnished by the Department of Health and Human Services". Thus, nothing in statute authorizes the mental health board to furnish information in its possession to law enforcement.